

NOMINATION OF RICHARD R. BURT

SEPTEMBER 30 (legislative day, SEPTEMBER 8), 1982.—Ordered to be printed

Mr. PERCY, from the Committee on Foreign Relations,
submitted the following

REPORT

together with
ADDITIONAL VIEWS

The Committee on Foreign Relations, to which was referred the nomination of Richard R. Burt, to be Assistant Secretary of State for European Affairs, having considered the same, reports favorably thereon and recommends that the nomination be confirmed.

BACKGROUND

Richard Burt received his bachelor of arts degree from Cornell University in 1969 and a master of arts degree from the Fletcher School of Law and Diplomacy of Tufts University in 1973. His main experience has been outside of government as a correspondent for the New York Times in Washington, D.C., from 1977 to 1980; as Assistant Director of the International Institute of Strategic Studies (IISS) in London from 1975 to 1977; and as a research associate at IISS from 1973 to 1975. In 1972, Mr. Burt was a senior research associate at the United States Naval War College. He also worked as copy editor for the Boston Globe from 1971 to 1973. Mr. Burt's government experience has included work as a consultant for the House Republican Wednesday Group and most recently, from January 1981 to May 1982, as the Director of the Bureau of Politico-Military Affairs, Department of State.

COMMITTEE ACTION

The nomination of Richard R. Burt to be Assistant Secretary of State for European Affairs was submitted by President Reagan to the Senate on August 17, 1982 (three days before the Labor Day recess) and referred to the Committee on Foreign Relations the same day. The Committee held a hearing on the nomination on September 15,

5384-16

1982, chaired by Senator Lugar, Chairman of the Subcommittee on European Affairs.

Mr. Burt gave his views on a wide array of issues relating to U.S.-European relations, including the following: the competitive nature of the U.S.-Soviet relationship; the utility of an aggressive U.S. public information policy in that competition; implications for the United States of the USSR's economic difficulties; the Administration's "differentiation" strategy to encourage pluralism in Eastern Europe; President Reagan's arms control strategy; the importance of effective consultative mechanisms and precise treaty language to support effective verification of arms control agreements; prospects for Intermediate-range Nuclear Force arms control talks and for the deployment in late 1983 of modernized NATO intermediate nuclear weapons; the advisability of U.S. sanctions result from the imposition of martial law in Poland; and the importance of close consultation with our European allies to develop a consensus on economic policy toward the USSR.

During this hearing, Senator Helms expressed his concern about an article appearing in the New York Times on June 29, 1979, written by Mr. Burr as a Times correspondent and entitled "U.S. Plans New Way to Check the Soviet Missile Tests." That article discussed certain possible means available to the U.S. government for monitoring Soviet compliance with the pending SALT II agreement. Senator Helms announced that he was writing to Senator Percy as chairman of the Committee to request that an intelligence "damage assessment" be undertaken by the Senate Select Committee on Intelligence concerning the publication of the article. Senator Percy subsequently agreed to this request and by letter of September 16 to Senator Goldwater, the Chairman of the Intelligence Committee, he and Senator Pell requested such an assessment. The Intelligence Committee conducted a study and made available its classified findings to the members of the Committee on Foreign Relations.

During the September 15 nomination hearing, Senators Lugar and Pressler also asked Mr. Burt a series of questions concerning the article in question and the circumstances surrounding its publication. Mr. Burt responded to these questions and to additional written questions submitted to him by Senator Pressler after the hearing. (His answers to these questions are included in an appendix to this report.)

At its business meeting on September 28, the Committee discussed the nomination and subsequently voted to recommend it favorably to the Senate. Senator Helms asked that his vote be recorded against the nomination.

COMMITTEE COMMENTS

During the Committee's discussion of the Burt nomination on September 28, members of the Committee made the following comments:

Senator HELMS. I would like to have a separate vote and let me make a brief comment about Mr. Burt. I don't know the man and obviously I don't desire to impune his qualifications. But the fact remains that he has engaged in a prima facie violation of the law. Now this is a risk that everybody in journalism makes. They have to make a judgment about what they are going to use and what they are not.

The point, and we can't escape it, is that he had been nominated for a post of responsibility and honor. Now if we are going to sanction that honor to him, then what are we going to do about the C-5 that also leaked. That town leaks like a sieve and it has become fashionable to leak classified information.

Now I can't go into it any more deeply than that. I have a code level briefing on the matter. I don't believe there is a chance that Mr. Burt will be confirmed by the Senate and certainly not until there has been a closed session of the Senate where this matter can be explored because it runs far more deeply than the qualifications of Mr. Burt or whether he is a nice guy or whatever. It does involve the kind of imprimatur that the Senate will place on one who has engaged in a *prima facie* violation of the law with reference to leaking classified material.

I say that with no personal criticism of Mr. Burt either as a person or as a journalist, but I do say that the facts are very clear and I believe you will find that there will be a number of Senators asking the Majority Leader to close the Senate so that this matter can be discussed, not limited to the implication of Mr. Burt himself, but to this whole business of leaking classified material.

* * * * *

Senator BIDEN. If I could respond, I would like to suggest that what Senator Helms is suggesting and its thrust is not without merit in that there was in fact a leak of material that was published in the press. As a member of the Intelligence Committee, along with Senator Lugar, we were asked to do a damage assessment report, the committee to do that. As a matter of fact, such a report was written and one of the two people who wrote the report was one of my staff designees. It is available to the entire committee in closed session or at their leisure but in private to examine it. So I will not, because it remains classified, speak to the elements of the report.

I disagree with Senator Helms in this case on two points.

First is the ultimate conclusion as to whether or not he should not be confirmed. In closed session I would go into detail as to why I disagree with that.

The second point that I disagree with, though, is the notion that there is a "*prima facie*" violation of the law. Now, in fact, although there would be "*prima facie*" evidence of violation of the law had Mr. Burt written this article while he had clearance it would be correct. If he had clearance and he wrote such an article or leaked such an article, it would be *prima facie* evidence of violation of the law and I believe would be prosecutable.

But there was no violation of the law, *prima facie* or otherwise, under any law we have written, including the recent law that we have passed relating to the disclosure of names of

agents, for example. There is that I am aware of no law on the books that would suggest that a reporter is violating the law if he or she were to publish information that was classified but that they had not published as a consequence of having gained access to it through a classification of their own, that they in fact had clearance.

So in this open hearing I would not want the press here covering this or the public at large to have us question whether or not Mr. Burt, in my opinion, even remotely is guilty of violating the law. We can argue, and Senator Helms and I, I suspect, will in closed session and possibly in open session, both here and in the Senate if he asks for a closed session in the Senate, as to whether or not Mr. Burt's judgment was good or bad and whether or not that judgment impacts upon or gives an insight into Mr. Burt's character and whether or not that in turn should impact upon whether or not he should hold such a position.

But I really would not want the open session, and I am not sure Senator Helms meant that there was a prima facie violation of the law on the part of Mr. Burt as a consequence of the position he held and what he published at the time. I don't know that.

Senator HELMS. If the Senator will yield?

Senator BIDEN. Yes, I would be happy to.

Senator HELMS. The Senator knows that I respect him. I must reiterate that I am not groping for any thread on this. I would much have preferred not to bother with it.

I am limited, Mr. Chairman, in what I can say because I have just recently finished a code word level briefing on this question. Let me read the U.S. Code, 18 USCS 798, and see what you make of it.

"Disclosure of classified information.

"A. Whoever knowingly and willfully communicates, furnishes, transmits or otherwise makes available to an unauthorized person or publishes or uses in any manner prejudicial to the safety or interests of the United States or for the benefit of any foreign government to the detriment of the United States any classified information, and then it goes on."

Now it was explained to me in the code word level session that that is the prima facie portion to which I referred. Now I say to Senator Biden again that I don't know Mr. Burt. If I have seen him other than when he appeared before this committee the other day, I don't recall having done so.

The question that this committee must confront, unpleasant as it may be, is what are we going to do in the case where a man is rewarded, honored and given a post of responsibility who has violated this law as I read it, and then what are we going to say to the C-5 down there who does the same thing? So it is a matter of policy.

The CHAIRMAN [Senator Percy]. I would like to just comment to Senator Helms at this point. I do know Mr. Burt. I

have been concerned about this matter. For that reason I did go to the Intelligence Committee hearing on the matter. I listened carefully to the Deputy Director and what he had to say and the conclusions he reached. I listened to the discussion and I asked some questions.

I then went over, and it is unusual for me to go over on a Saturday morning to the State Department, and asked to see the Secretary of State and sit down and talk with him about an issue, but I felt there was enough concern about this that before he left for the United Nations and before this meeting that I should hear directly from him his assessment of the situation and his desire to have Richard Burt onboard.

He gave me every assurance that he had been satisfied completely and that he wanted him very much and wanted him, if possible, confirmed before we recessed. I do know that the question came up, as always, as to what the duty of a journalist is. Obviously there was an investigation at that time [June 1979]. As I understand it, a very, very large number of witnesses were interrogated by the FBI and a report was made but no charges were brought. At no time did anyone see fit in the Justice Department to bring charges under this particular statute.

The question is always raised, well, who gave the document? Weren't they the culpable one then and what is the duty of a journalist when they are given a document possibly by a high-level person? What is policy then? That confuses them.

I know that Senator Lugar as a member of the Intelligence Committee representing this committee, as is Senator Biden, has spent more time on it than I have, and I have spent a lot of time on it because of the concerns, the genuine concerns in the letter you wrote to me and I share your concerns.

I have come to the conclusion that it would be well to vote on him up or down in this committee, and, if we vote favorably or unfavorably, to send it to the floor for proper disposition on the floor, and any Senator has his rights there. But we have spent a lot of time on this and I would like to see us move it out of the committee at least and at least have a vote up or down on it.

Senator Lugar, and then I would like to recognize you, Senator Glenn.

Senator LUGAR. Thank you, Mr. Chairman.

During the hearing that our Subcommittee on European Affairs conducted there were two lines of questioning that were important and that I think lead all of us, not necessarily to confusion about the law that Senator Helms has cited, but certainly to considerable inquiry as to how it would apply.

The line of questioning that I pursued was to ask Mr. Burt if he had received information from officials in government. I cited Administration people, not necessarily those in the White House, State Department or Defense, but officials of the Administration. He indicated that the record that has been given to committee members would show that he had received information from them.

I asked why he felt they would have given this information to him and he indicated that in those days I would recall that the SALT debate was going on and that it might have been of advantage to those who are pushing the point of view to have information available to the public.

I would sort of stop at that point because clearly what was afoot there is a subject all by itself. But, nevertheless, for whatever reasons Mr. Burt and maybe others were given information. Now he, I suppose, had some choices to make about it. He defined his own activity as writing the story.

Senator Pressler then pressed on as to whether he published the story, and he said no, he wrote the story. He made an interesting point that the New York Times, and for that matter other leading papers, have people who serve as counsel with regard to libel suits to protect the paper against publishing the false material. But they do not have persons who are damage control experts with regard to intelligence, and this may be a problem. They would claim that they could not because they do not have persons who are cleared to understand what is of high classification and what should not be.

Mr. Burt said he did not make those judgments, although he admits that he was aware that this was potentially sensitive material, and by sensitive he meant things that were not generally available to the public as a whole.

Now in the course of all of this inquiry Mr. Burt has been asked, I think by you, Mr. Chairman, and the responses are forthcoming, as to are there occasions when you decide not to pursue something. He has indicated there were two or three occasions in which he decided not to pursue it. This was not one of them.

It is a reasonably open question as to where responsibility lies all along, although clearly it appears that the FBI or the Justice Department or others pursuing this might not have pursued it so vigorously if in fact people in government had been releasing it to begin with for purposes of a debate that was proceeding at that time.

My own judgment is that the incident is regrettable. The intelligence information is available to all members of this committee and the Senate. I will in fact vote in favor of Mr. Burt's confirmation because I believe that he is well qualified, but this does not really dismiss an issue of public policy which is not wrestled with very successfully.

It seems to me that that is an inquiry for a different day, but at least in my judgment it would not lead me to vote against this nomination.

* * * * *

Senator GLENN. Mr. Chairman, just a couple of brief comments, and I don't disagree with most of the things that have been said here. This thing of freedom of the press and how we control access to classified material has been a continuing difficult situation ever since I have been around here and I don't think we have adequately defined it. It is only when some-

thing occurs that we all get excited and we all go through these drills and really don't solve anything for the future, and we ought to do that. We ought to set this down and have it much better understood than we do.

But one area there is no doubt whatsoever about, and that is whoever leaked this material was in very clear violation of the law and I would be happy to see him thrown into federal prison if we knew who it was and could prove it. That is the spot that there is no doubt about whatsoever.

We are concerned here about the bearer of the news, the bearer of the bad tidings or the bearer that may have violated, too. I don't know. But there is just no doubt that this idea, in both the last Administration and this Administration, of it being generally known among the news media that there is sort of a designated leakor over there. If you want the inside dope they really want out that is classified without releasing that inside dope, you contact the designated leakor and you become the designated leakee then I guess. Who this puts most at fault I don't know, but I know that it is a very bum situation.

I think if we are going to have any further full investigation of this I would like to see full investigation of those who are leaking information both in the last Administration and this one over there and throw the full force of the law at them so we stem the flow of this before it ever gets to the news media and then they have to make a decision as to whether they are violating the law and then we get upset when they make a decision that we don't agree with.

I don't know where we go with it as far as what this committee can do, but if there is anything we can do to stop these things called authorized leaks, and that was always a competition of terms or something here, a dichotomy of terms I guess, an authorized leak, that whatever we can do to investigate that and bring the full force of the law down on those who are taking it upon themselves to make these releases and violate the law, then I think we ought to do it, and I don't know what that means is.

* * * * *

Senator PELL. Mr. Chairman, I had the opportunity to read the damage assessment report carefully and I came to the same conclusion as the two members of the Intelligence Committee on our committee, the Senators from Delaware and Indiana, and believe that any culpability does not rest upon Burt but upon those who leaked to him.

I would also remind my colleagues that the New York Times for which he was working I think felt it was burnt when prior to the Bay of Pigs it withheld that information at the request of the government and felt that the harm was done to the United States' interests by having withheld it because if it had been published that abortive effort would probably not have come off. I think this train of thought should be borne in mind as well.

Portion of SFRC Transcript of Burt Nomination Hearings,
September 15:

Senator PRESSLER. *** would you describe how you make a decision on, if the intelligence community, the so-called official intelligence community, feels that something is classified—and I do not know if that fits the case of the article, but how do you deal with that? Being a reporter for the New York Times, you must have been constantly making decisions and judgments in this area, because the New York Times does a good job, very frankly, of reporting foreign policy. I think they and the Los Angeles Times do an outstanding job.

Describe your work as a correspondent for the New York Times. When you are working on a story in arms control or something that is very close to having classified material in it, would you consult with the agency? Please give us a description of what that experience is like?

Mr. BURT. Well, Senator, that is very hard, because no two experiences are quite the same. Generally speaking, as Senator Pell pointed out, the pressures in the newspaper business are to obtain more information than the other paper. There were circumstances that, when I obtained information, I did not think it was appropriate or necessary that it be published. There were some cases when I obtained information that I did discuss beforehand with officials to ensure that no particular problems would arise. That is normally the exception rather than the rule, I think, for most reporters.

In this specific case—of course, reporters do not have security clearances and they do not necessarily have the information necessary to determine whether or not they are going to create security problems when they write a story. I happen to think, speaking generally, that this is a problem for the press, and it is a problem that the press does not sufficiently think about.

I note, for instance, that when someone writes a newspaper article that is potentially libelous, frequently newspapers bring in a lawyer to examine the story and sometimes suggest changes, so that paper will not be sued. There is no corresponding function in the national security area. Newspapers do not have intelligence specialists or national security experts to advise them on whether a story is potentially harmful or not.

I think it is unfortunate that Senator Helms has left. Following—and I emphasize “following”—the publication of the story to which he alluded, I was made aware by people that this story had created concern within the intelligence community. I was very concerned about the fact that that had happened, and I immediately sought appointments with Stanfield Turner about this problem. And I visited him at the Central Intelligence Agency, because I was concerned about the fact that this story could have created problems.

Of course, I was a reporter at that time, so I never learned whether or not or how serious the problems were.

Senator PRESSLER. I wonder if you could verbalize for us the standard that you used, in the sense that I guess in a lot of the hearings we have in the Arms Control Subcommittee, we have them as classified hearings, that is they are closed, and yet the next day they are in the major papers. And I should have included the Washington Post and lots of others when I mention papers that do a lot of reporting on foreign affairs.

Yet, this is not usually regarded as a violation. I mean, the reporters writing it must have sources, though I do not know what those sources are. But they print the article under their byline, knowing that the material is drawn from a so-called closed hearing. Of course, whether that hearing should be closed in the first place and whether the things that are discussed there are classified is a question that you could debate circuitously.

But I imagine that a reporter or a newspaper develops a sort of approach to it. I would like you to verbalize. Like in the writing of that particular story I guess you had the names of some program or something that was classified, but I do not know if the general information in that story was classified.

Mr. BURT. Well, maybe I am saying the obvious, but I did not have a security clearance. And I assume the person who gave me the information did. And when you ask me, how do people get information from closed hearings, information which shows up in the newspaper the next day, it comes from people who were obviously at those closed hearings or had access to them.

The reporter aggressively tries to find from officials and individuals who have the information, and for one reason or another those officials make the decision to provide that information.

Senator PRESSLER. In Senator Helms' letter, he says: "In this article, Mr. Burt revealed for the first time that the United States was planning a new way to check Soviet missile tests to replace the assets lost in Iran. Mr. Burt reportedly broke extremely sensitive classifications to publish the name of the Chalet satellite and details of the radio intercept antenna system in Norway. The effect of this publication was not only to compromise our ability to detect Soviet missile testing, but also to disturb our relations with Norway."

Was that material obviously classified at the time you heard about it, or is it that you did not know it was classified if it was?

Mr. BURT. Well, I will be quite honest. I assumed that it probably was.

Senator PRESSLER. You assumed that it was classified material?

Mr. BURT. Uh-hmm.

Senator PRESSLER. Did you check? Well, I guess there is no one that you can check with. But knowing it was classified material, did you feel it might be harmful to have it published?

Mr. BURT. Well, in this case I did not. As I said before, there were circumstances where I did check. As I said before, when I learned, following the publication of the story, I was somewhat alarmed. And, as I mentioned before, I discussed this with, among others, Stanfield Turner.

Senator PRESSLER. So as a reporter—and I will not pursue this further, but I am trying to get a feel for how a correspondent for a major paper, when he receives information that he knows is classified—how do you make a decision as to whether to include it in your story? Do you put it in your story and ask your editor to make a decision? What process do you go through? That is what I am trying to get at.

Mr. BURT. I do not think there is one. This is the point I was trying to make before. I think right now—I think the general approach, the standard operating procedure, is to publish. I know that in fact the decision to publish is in fact my editor's decision, in this case the editor in Washington and then the editor in New York.

Senator PRESSLER. They took your article, then, pretty much as it was and ran it. As I understand it, they had no further questions. Did you tell your editor that you thought the information was classified?

Mr. BURT. No. I was never asked the question of whether any information was classified.

Senator PRESSLER. But you knew it was classified at the time.

Mr. BURT. Well, I did not know it was. But I presumed it was sensitive information.

Senator PRESSLER. And knowing that it was sensitive, then you personally made a decision to publish it?

Mr. BURT. No, I personally made the decision to write the story.

Senator PRESSLER. You made the decision to write the story. How would your editors have known it was sensitive information? The story would do what, go up to New York? Is that how it would work, it would go up to New York?

Mr. BURT. Well, the story was written in Washington. It would go through editors in Washington and then would go through editors in New York.

Senator PRESSLER. Would they know it was classified unless you told them?

Mr. BURT. Well, again, I did not know if it were classified. I thought it was.

Senator PRESSLER. But you knew it was sensitive. Well, I guess of course a lot of information is sensitive.

Mr. BURT. That is right. Anyone who covers national security for a major newspaper, there is generally a premium on obtaining as much information as possible.

Senator PRESSLER. Now, what did you do when you were at the International Institute for Strategic Studies in London?

Mr. BURT. I went as a research associate and then served as the assistant director.

Senator PRESSLER. Then earlier you were with the Boston Globe. Did you write there?

Mr. BURT. No, that was just a part-time job when I was in graduate school.

Senator PRESSLER. We will be holding hearings next week on the arms race in outer space, the satellite—killers and lasers. You will be head of the European Affairs Group. What do you foresee in terms of the possibility of negotiations with the Russians in this area, which I think we have broken off some time ago?

Mr. BURT. Well, I have not had an opportunity recently, Senator, to look very closely at this subject. But when I was handling this problem earlier in the Bureau of Politico-Military Affairs, there were some obstacles, I think, to the control of so-called ASAT weapons, anti-satellite weapons.

One is the obvious fact that the Soviet Union is the only country that now possesses an operational capability in this area, which does not give us a great degree of negotiating leverage.

Second, the problem of verifying anti-satellite weapons is a very complicated one.

Senator PRESSLER. Thank you.

I have no further questions.

Senator LUGAR. Thank you, Senator Pressler.

Mr. BURT. let me ask two or three more questions, just to follow up Senator Pressler's line so that the record at least is complete as far as I can see it.

Prior to the publication of the article that we have been discussing, did anyone from the Administration—and by that I mean not only from the White House staff or the Department of Defense or the Department of State—call you and advise you that the material that was involved was highly sensitive?

Mr. BURT. No. I had several conversations with Administration officials about the material, obviously, because I was writing the story. And I was not informed that the story should not be written.

Senator LUGAR. All right. On the flip side of that situation, why would anyone in the Administration have given you this information to begin with? Was there an eagerness for publication? How did it come into your hands?

Mr. BURT. I can only presume that the reason—you will recall at the time the story was written there was a great deal of concern about whether or not the SALT II treaty could be adequately verified, and I presume that the individuals who made this information available to me wanted to demonstrate that we had the adequate means to verify the treaty.

Senator LUGAR. In other words, there were Administration officials attempting to demonstrate the ability of the United States to verify the SALT II treaty who sought you out, or at least made available to you this information as a part of what might have been a public relations campaign to indicate our capability?

Mr. BURT. I would agree with that, other than that you said "Administration officials." I would prefer just to stay with

"individuals." Although I am no longer a reporter, I still feel uncomfortable talking about sources.

Senator LUGAR. I understand. But obviously someone, therefore, if not the Administration, someone who had access to this information, who had at least some official capacity at that time?

Mr. BURT. Yes.

Senator LUGAR. Senator Biden?

Senator BIDEN. Thank you, Mr. Chairman.

Mr. Burt, without my naming names, it would ill become certain Senators, none of whom are on this dais at the moment, to make a decision on whether or not you should be confirmed based upon whether or not you did—in fact, knowing you were just doing your job, because you did your job.

I have heard it rumored that on occasion Senators have leaked sensitive information for political purposes. I do not know that to be true.

Mr. BURT. Oh, I do not believe that, Senator.

[Laughter.]

Senator BIDEN. Also, Secretaries of State and Secretaries of Defense. This is a very new standard by which we are going to judge you. As a matter of fact, if in fact we conclude that you should not be confirmed because of this, I would think it would be easier for us to write into the law that no journalist should hold a position of responsibility, because if you are good you will end up in this circumstance, and if you are not very bright this will never happen and we would not want you anyway.

U.S. DEPARTMENT OF STATE,
Washington, D.C., September 17, 1982.

HON. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations, U.S. Senate.

DEAR MR. CHAIRMAN: Following the nomination hearing of Richard R. Burt to be Assistant Secretary of State for European Affairs, Senator Pressler submitted additional questions to be answered for the record. Please find enclosed the responses to those questions.

I am also enclosing the additional information requested by Senator Pell during the hearing concerning U.S. and Soviet troops stationed outside their own country.

With cordial regards,

Sincerely,

POWELL A. MOORE,
Assistant Secretary for Congressional Relations.

Enclosure: As stated.

Question. How many U.S. and Soviet troops are stationed outside of their own country?

Answer. There are presently some 486,000 U.S. military personnel on active duty outside the United States and its territories. Some 432,000 are categorized as ashore and approximately 54,000 are classified as afloat. The great majority of these overseas deployments are integral elements of our longstanding security ties with our Western European and East Asian allies. Some 320,000 serve in NATO countries under NATO Status of Forces Agreements. There are approximately 47,000 in Japan, 39,000 in the Republic of Korea and 15,000 in the Philip-

pires with additional numbers in naval units in these regions and elsewhere. There are also relatively small numbers of U.S. personnel overseas in military advisory capacities. A request for more detailed information, however, might be best referred to the Department of Defense.

It is, of course, much more difficult to assign a precise total or breakdown to the numbers of Soviet military on duty outside of the Soviet Union. Nevertheless, it is quite clear their deployments outside their borders far outnumber ours. We believe there are some 600,000 Soviet troops stationed in Eastern Europe under the Warsaw Pact. Almost two-thirds are concentrated in the German Democratic Republic, but there are sizable contingents in Poland (55,000), Czechoslovakia (80,000), and Hungary (70,000) as well. In Asia, there are approximately 55,000 Soviet troops in Mongolia. And, of course, the Soviet Union has an expeditionary force of almost 100,000 combat troops occupying Afghanistan. In addition to ground forces stationed outside the Soviet Union, personnel strength of the Soviet Navy has grown considerably as the Soviet fleet has expanded in size and intensified its worldwide operations.

It should also be noted that there is a significant Soviet military presence in various countries of the Third World. We estimate that approximately 20,000 Soviet military personnel are stationed in some 28 countries, where they play a key role in the organization, training and penetration of local armed forces. The heaviest concentrations of these advisers have been found in such countries as Algeria, Libya, Angola, Ethiopia, Iraq, Syria, South Yemen and Vietnam.

1. *Question.* What is the step-by-step process by which a reporter decides whether or not to publish sensitive information? For instance, do you clear this information with your editors in Washington as well as in New York?

Answer. There is no distinct process by which publication decisions are made regarding stories dealing with national security matters. Nor is there any "clearance" process per se. In the case of the article published in the New York Times on June 29, 1979, the story was prepared by myself after conversation with Executive Branch and Congressional officials and was read and edited by editors in both Washington and New York, who then decided to publish the article.

2. *Question.* When in doubt as to whether information is sensitive, do you or your editors seek the guidance of any office in the national security community? If so, which?

Answer. I am unable to speak for my former editors as regards any procedures they may follow in this area. My personal standard was that I would not knowingly submit for publication anything which I believed would jeopardize the national security and I was prepared to consider the views of national security officials in this regard. In the case of the specific article in question, I discussed the contents with Executive Branch officials. In one conversation I was told that a piece of information I had considered including in the article was highly sensitive. I was asked to omit it and I did so.

3. *Question.* If material is known to be classified and if elements in the national security community are aware that you possess such information and make their objections to publication known, who decides whether to publish? By which process is this decision made?

Answer. Neither reporters nor editors possess security clearances. As a result, they are not in a position to know what is classified and

what is not. In this specific case I was not told that the material I had been provided was classified. Other than the request made to omit a particular piece of sensitive information (which I noted in my answer to question 2) I do not recall any request not to write this story. I do not know whether or not any request was made to any other employee of the New York Times not to publish this particular story. I should add that reporters do not have the authority to determine what is published. That decision is made by the editors.

4. *Question.* What distinctions do you draw between the role of a reporter and the role of someone in the Government with responsibility to protect classified information?

Answer. There is a clear distinction between the two. As a government official, I have undertaken a solemn obligation to safeguard classified information. Thus, I would never wittingly divulge it. When I was a reporter, I had an obligation to collect information in carrying out the role of a free press under the First Amendment of the Constitution. I believe that as a general principle it is the responsibility of government officials with security clearances to safeguard classified material. However, as a reporter, I was of course mindful of my responsibilities as an American citizen and attempted to be sensitive to this nation's security.

ADDITIONAL VIEWS OF SENATOR JESSE HELMS

On June 29, 1979, Mr. Richard Burt, then a newsman for the New York Times, published an article in that newspaper which did grave security damage to his country. In that article, Mr. Burt revealed highly classified information as to the existence, purpose, and capability of a very expensive satellite reconnaissance system intended to assist in the verification of Soviet treaty compliance. The publication also compromised the position of the United States with regard to a NATO partner. This last point alone raises questions as to how a person who was responsible for such an act could conduct U.S. relations with our European allies.

The Senate Select Committee on Intelligence did an assessment of the damage which Mr. Burt did on June 29, 1979, and concluded that the information he released fit the literal definition of "top secret"—that is, information the release of which could be expected to do exceptionally grave damage to national security. In the intelligence business it is seldom possible to estimate the material damage of disclosures. It is enough to say, however, that if the release of the information about this intelligence-gathering system is not gravely damaging, then we can safely open up every safe in the CIA to Soviet inspection.

But beyond the substantive issue we must examine the overall question of public policy on such disclosures. It has been argued that Mr. Burt was only doing what a good newspaperman should do, and that the person who was really guilty was the person or persons who gave him the classified data. Mr. Burt is not on trial. His actual guilt or innocence would be a matter for judicial decision. He admitted, however, before the Committee that he was aware that the information he published was sensitive. The law provides that not only the person who releases the data, but also the person who publishes the data, or who conceals or harbors someone who releases such data without authorization is in violation. Mr. Burt declined to tell the Committee who provided him with the unauthorized data.

Thus we have a *prima facie* case that Mr. Burt violated the law. The question then arises whether or not journalists are exempt from the espionage laws under the first amendment. It would be useful to have the opinions of experts from the Senate Select Committee on Intelligence or the Judiciary Committee on whether or not journalists have a special exemption. Of course, if they do have such an exemption, then no issue of national security can be protected, and this nation stands defenseless.

The relevant law is at 18 U.S.C. 798, which provides:

Whoever knowingly and willfully communicates, furnishes . . . or publishes . . . any classified information . . . concerning the design, construction, use or repair of any device, apparatus or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communications intelligence purposes; or concerning the communications intelligence activities of the United States or any foreign government . . . shall be fined not more than \$10,000 or imprisoned not more than ten years or both.

In addition, there is 18 U.S.C. 792, which punishes anyone for harboring or concealing persons (who a person has reason to believe has or will violate one of the espionage laws, which prohibit distributing classified information to unauthorized persons).

The espionage laws referred to can be found at 18 U.S.C. 793 (e), (g), and 18 U.S.C. 798.

The law quite explicitly punishes not only those who give such information to journalists, but also the journalists themselves (i.e., whoever "publishes"). The words "furnishes" and "communicates" close off any possible misinterpretation. The law reaches not only those who have sworn to protect the secrets of this nation, but also those who receive them without authorization and publish, furnish, or communicate them. Not only is the person who breaks his oath guilty, but so is anyone in the subsequent chain of responsibility leading to the appearance of such data in a newspaper on the street, or broadcast on the air.

On June 29, 1979, Mr. Burt wrote in the New York Times that the U.S. government had a currently operational intelligence satellite system, code-named Chalet. He let it be known that, although this satellite was similar to the U.S. geo-synchronous telemetry collection satellite the Soviets knew about, Chalet was different because, although it was capable of intercepting Soviet telemetry signals, it was really intended for other purposes. He also revealed that the antennae were located at a base in Norway, thereby jeopardizing that nation's delicate relations with the Soviet Union, and straining our own relationship.

As a journalist, Mr. Burt may have sincerely believed that he had the right, or even the duty, to publish such information, even though to do so was a prima facie violation of the law. But in so acting as a journalist, he placed himself in a category that, in the opinion of the Senator from North Carolina, ought to disqualify himself from receiving the distinct honor of confirmation to an office in the U.S. government of high trust and responsibility. Obviously, Mr. Burt's problem is not that he acted as a journalist, but that he acted as a journalist in defiance of the espionage laws. The Senator from North Carolina spent many years as a journalist himself, both in the print media and in broadcasting. I am especially sensitive to issues of freedom of the press, perhaps with more practical experience in this area than the majority of his colleagues in the Senate. I would never uphold an absolute right of government to secrecy. But the espionage laws represent a special case in which the Constitution must be interpreted to allow the nation to protect the secrets which make national survival possible. Any other interpretation would render the Constitution itself inoperative. Mr. Burt's action itself undermines the Constitution.

His action also undermined the security of the country. The full case cannot be made in public because the matters he revealed are part of a top-secret mosaic, parts of which we hope the Soviets do not yet know. These matters can only be discussed in a secret session of the Senate.

Mr. Burt's untimely disclosure occurred during the previous Administration. The then Director of Central Intelligence said at that time that Mr. Burt's disclosures "are having extremely detrimental effects on the capability of the intelligence community to perform its functions." The National Security Agency at that time said that Mr. Burt's disclosures "are rendering the damage assessment process meaningless and numbing." Would anyone expect their successors in this Administration to say any less?

That being the case, we must ask the question: What would be the impact throughout the Executive Branch if the Senate should confirm to a post of high honor a person who has, *prima facie*, engaged in the flouting of the espionage laws? Does anyone think that respect for security would be strengthened? What would those in lower echelons think if they were tempted to disclose national security information without authorization? Would not the result be for the lower echelons to conclude that they, too, can participate in national security leaks if the Executive Branch and the Senate condone apparent violation of the espionage laws by persons nominated to high office?

The Senator from North Carolina is not acquainted with Mr. Burt. I do not dispute his ability or other qualifications for office. He is, however, caught in a formal contradiction between the posture he assumed in his past profession and the requirements for high governmental office. Indeed, how could Mr. Burt even be effective in the post of Assistant Secretary for European Affairs where he would have to deal on an official level with the allies whose interests he betrayed as a journalist? Mr. Burt cannot have it both ways; neither can the Administration, nor the U.S. Senate.

JESSE HELMS.

